

FILED
AUG 25 2009

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOHN L. CALVERT,

CV. 07-1466-JE

Plaintiff,

FINDINGS AND RECOMMENDATION

v.

WARDEN J.E. THOMAS,

Defendant.

JELDERKS, Magistrate Judge.

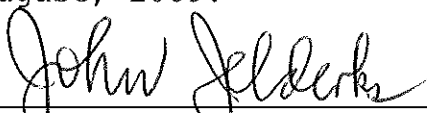
This prisoner civil rights case comes before the court on plaintiff's Motion for Judgment by Default (#33). The decision whether to grant default judgment rests within the "sound discretion of the District Court." *Enron Oil Corp. v. Diakuhara*, 10 F.3d 90, 95-96 (2d Cir. 1993). The Ninth Circuit has emphasized that entry of a default judgment is a "drastic step appropriate only in extreme circumstances." *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984). Whenever possible, a case should be decided on its merits. *Id.*

As with his prior Motion for Default Judgment (#22), plaintiff has provided no specific reason which would lead the court to find defendant in default in this case. As a result, the Motion for Default Judgment (#33) should be DENIED.

SCHEDULING ORDER

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have ten (10) days from the date of service of a copy of this recommendation within which to file specific written objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issue, and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 21 day of August, 2009.



John Jelderks
United States Magistrate Judge